

EXHIBIT 226



U.S. Citizenship
and Immigration
Services

Need help? Ask Emma



MENU

Home > Humanitarian > Refugees and Asylum > Asylum > Obtaining Asylum in the United States

Obtaining Asylum in the United States

i ALERT: Court Order on Circumvention of Lawful Pathways Final Rule

On Aug. 3, 2023, the U.S. Court of Appeals for the Ninth Circuit issued a stay of the U.S. District Court for the Northern District of California's order in *East Bay Sanctuary Covenant v. Biden*, 18-cv-06810 (N.D. Cal.), vacating the Circumvention of Lawful Pathways (CLP) rule. At this time and while the stay remains in place, USCIS will continue to apply the CLP rule.

Under the rule, certain individuals who enter the United States through its southwest land border or adjacent coastal borders are presumed to be ineligible for asylum, unless they can demonstrate an exception to the rule or rebut the presumption. Individuals are encouraged to use lawful, safe, and orderly pathways to come to the United States.

i ALERT: Interpreters at Affirmative Asylum Interviews

See more ▼

There are 3 ways of obtaining asylum in the United States:

- The affirmative process;
- An Asylum Merits Interview after a positive credible fear determination; or
- The defensive process.

✕ Close All ✕ Open All

Affirmative Asylum Processing with USCIS



To obtain asylum through the affirmative asylum process you must be physically present in the United States. You may apply for asylum regardless of how you arrived in the United States or your current immigration status.

You must apply for asylum within 1 year of the date of your last arrival in the United States, unless you can show:

- Changed circumstances that materially affect your eligibility for asylum or extraordinary circumstances relating to the delay in filing; and
- You filed within a reasonable amount of time given those circumstances.



You may apply for affirmative asylum by submitting [Form I-589, Application for Asylum and for Withholding of Removal](#), to USCIS.

If your case is not approved and you do not have a legal immigration status, we will issue a Form I-862, Notice to Appear (NTA), and refer your case to an immigration judge with the Department of Justice's Executive Office for Immigration Review (EOIR). The immigration judge conducts a “de novo” hearing of the case. This means that the judge conducts a new hearing and issues a decision that is independent of the decision made by USCIS. In certain circumstances, if USCIS does not have jurisdiction over your case, the asylum office will issue a Form I-863, Notice of Referral to Immigration Judge, for an asylum-only hearing. See the section “Defensive Asylum Processing With EOIR” below if this situation applies to you.

If you were previously issued an NTA that was not filed and docketed with the EOIR immigration court, or your previously issued NTA was filed and docketed with EOIR either shortly before (within 21 days) or after you filed your Form I-589 with USCIS, USCIS will refile your NTA (if necessary) and send your Form I-589 to the immigration court for adjudication.

To determine where to file your Form I-589, follow the instructions under the “Where to File” section on our [Form I-589](#) page. For more information, please see [What Happens After You File Your Form I-589 With USCIS](#).

You may live in the United States while your Form I-589 is pending before USCIS. If you are found ineligible, you can remain in the United States while your Form I-589 is pending with the immigration judge. Asylum applicants are not authorized to work unless you meet certain requirements. For more information, please see [Permission to Work in the United States](#). Affirmative asylum applicants are rarely detained by U.S. Immigration and Customs Enforcement (ICE).

Please see the [Affirmative Asylum Process](#) for step-by-step information on applying for asylum through the affirmative asylum process.

Asylum Merits Interview with USCIS After a Positive Credible Fear Determination



If you are placed in expedited removal proceedings and indicate an intention to apply for asylum, express a fear of persecution or torture, or express a fear of return to your country, you will be referred to USCIS for a credible fear screening. For more information, visit the [Credible Fear Screenings](#) page.

A USCIS asylum officer will conduct a credible fear screening interview to determine whether you have a credible fear of persecution or torture. For more information, visit the [Questions and Answers: Credible Fear Screening](#) page.

If an asylum officer finds that you have a credible fear of persecution or torture, USCIS may either:

- Retain and consider your application for asylum and also consider your eligibility for withholding of removal and protection under the Convention Against Torture (CAT) in a second interview. This is known as an Asylum Merits Interview. An asylum officer will decide whether you are eligible for asylum. If necessary, an asylum officer will also determine whether you demonstrated eligibility for withholding of removal or protection under CAT based on the record before USCIS; or
- Issue a Notice to Appear before an immigration judge for consideration of your asylum, withholding of removal, and CAT protection claims. When you file the Form I-589, Application for Asylum and for Withholding of Removal, with the immigration court, it places you in the “defensive” asylum process. See “Defensive Asylum Processing With EOIR” below for more information.



For more information, visit the [Asylum Merits Interview with USCIS: Processing After a Positive Credible Fear Determination](#) and [Questions and Answers: Credible Fear Screening](#) pages.

Defensive Asylum Processing with EOIR



A defensive application for asylum occurs when you request asylum as a defense against removal from the United States. For asylum processing to be defensive, you must be in removal proceedings in immigration court with the Executive Office for Immigration Review (EOIR).

Individuals are generally placed into defensive asylum processing in one of two ways:

- They are referred to an immigration judge by USCIS after they have been determined to be ineligible for asylum at the end of the affirmative asylum process, or
- They are placed in removal proceedings because they:
 - Were apprehended in the United States or at a U.S. port of entry without proper legal documents or in violation of their immigration status; or
 - Were apprehended by U.S. Customs and Border Protection (CBP) trying to enter the United States without proper documentation, were placed in the expedited removal process, and were found to have a credible fear of persecution or torture by an asylum officer. See [Questions & Answers: Credible Fear Screenings](#) for more information on the credible fear process.

Immigration judges hear defensive asylum cases in adversarial (courtroom-like) proceedings, as necessary. The judge will hear arguments from both of the following parties:

- You (and your attorney, if represented)
- The U.S. government, which is represented by an attorney from U.S. Immigration and Customs Enforcement (ICE)

The immigration judge then decides whether you are eligible for asylum. If the immigration judge finds you eligible, they will grant asylum. If the immigration judge finds you ineligible for asylum, they will determine whether you are eligible for any other forms of relief from removal. If the

immigration judge finds you ineligible for other forms of relief, they will order you to be removed from the United States. Either party can appeal the immigration judge’s decision.




See the [Granted a Green Card by an Immigration Judge or Board of Immigration Appeals](#) page for information about the grant of asylum by an immigration judge.


For information about the Executive Office for Immigration Review, including the Immigration Courts and the Board of Immigration Appeals, see [Executive Office for Immigration Review](#). To determine where to file your Form I-589, follow the instructions under the “Where to File” section on our [Form I-589](#) page.

Key Differences Between Affirmative Asylum, Asylum Merits Interview with USCIS after a Positive Credible Fear Determination, and Defensive Asylum



Affirmative Asylum Processing With USCIS	Asylum Merits Interview With USCIS After a Positive Credible Fear Determination	Defensive Asylum Processing With EOIR
You have not been placed in removal proceedings before an immigration judge (unless you are an unaccompanied child).	<p>You were subject to expedited removal and found to have a credible fear of persecution or torture.</p> <p>You have not been placed in removal proceedings before an immigration judge.</p>	You have been placed in removal proceedings before an immigration judge.

Affirmative Asylum Processing With USCIS	Asylum Merits Interview With USCIS After a Positive Credible Fear Determination	Defensive Asylum Processing With EOIR 
<p>You affirmatively submit Form I-589, Application for Asylum and for Withholding of Removal, to USCIS.</p>	<p>The written record of the positive credible fear determination made during the credible fear screening process is treated as your application for asylum. You do not need to file a Form I-589 with USCIS.</p>	<p>You:</p> <ul style="list-style-type: none">• Are placed in removal proceedings by USCIS after USCIS does not grant asylum in the affirmative process;• Are placed in removal proceedings by ICE or CBP for immigration violations; or• Were subject to expedited removal, found to have a credible fear of persecution or torture, and issued a Notice to Appear. <p>If you were referred to EOIR by USCIS, the asylum application on file with USCIS will carry over to the immigration judge, provided it was not abandoned or dismissed. If you do not have an asylum application on file with USCIS, you must submit a Form I-589 to the immigration judge if you wish to apply for asylum.</p>

Affirmative Asylum Processing With USCIS	Asylum Merits Interview With USCIS After a Positive Credible Fear Determination	Defensive Asylum Processing With EOIR 
<p>You appear before a USCIS asylum officer for a non-adversarial affirmative asylum interview.</p>	<p>You appeared for a credible fear screening interview with a USCIS asylum officer. You were found to have a credible fear of persecution or torture and USCIS retained the case.</p> <p>An asylum officer further considers your application for asylum in a non-adversarial Asylum Merits Interview. If they do not grant asylum, they will determine your eligibility for withholding of removal or protection under the Convention Against Torture (CAT) based on the record before USCIS.</p>	<p>You appear before an immigration judge with EOIR for an adversarial, court-like hearing, if necessary.</p>
<p>You usually must provide a qualified interpreter for the affirmative asylum interview.</p>	<p>USCIS provides a qualified interpreter for the Asylum Merits Interview.</p>	<p>The immigration court provides a qualified interpreter for the asylum hearing and all other court proceedings.</p>

Related Links

▼

 Close All  Open All

Last Reviewed/Updated: 09/13/2023